

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the foregoing amendments and the following remarks.

In the Office Action dated August 25, 2008, Claims 1-20 were pending. Of these claims, Claims 1 and 13 are independent claims; the remaining claims are dependent claims. Claims 1-20 stand finally rejected. In response, Applicants have submitted a Request for Continued Examination and this Amendment. In this Amendment, claims 1-20 have been cancelled and claims 21-40 have been newly presented, with claims 21, 34 and 37 being independent claims; the remaining claims being dependent therefrom.

It should be noted Applicants are not conceding in this application the claims cancelled herein are not patentable for the reasons cited by the Examiner in the outstanding Office Action, as the present claim cancellations and presentation of new claims are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no cancellation of any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejections under 35 USC § 112

Claims 1-20 stand rejected under 35 USC § 112, first paragraph, as failing to comply with the written description of the invention requirement. Claims 1 and 13 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 13 apparently stand rejected under 35 USC § 112, second paragraph, because “the claim does not recite various promotions offered to a customer or other customers”. *Office Action*, pp. 4. Claim 14 apparently stands rejected under 35 USC § 112 for reciting new matter. Applicants respectfully disagree; however, claims 1-20 have been cancelled herein, rendering the rejections moot.

Applicants kindly remind the Examiner “that exact terms need not be used *in haec verba* to satisfy the written description requirement.” MPEP 1302.01. Moreover, Applicants respectfully submit that a careful reading of the specification indicates that the previously presented claims found adequate support throughout the specification. For example, the Examiner asserts that “[n]owhere in the specification is discloses [sic] a step of obtaining information about the market conditions.” *Office Action*, pp. 5. However, the specification clearly states “The sampling engine 262 of the Dynamic Optimization System 270 may be used by many different applications to obtain information about current market conditions.” *Specification* at [0072].

Applicants also respectfully submit that the newly presented claims also find full support throughout the disclosure as originally filed. Particularly, support for the newly

added claims can be found at: [0024]-[0030]; [0050]-[0071]; [0074]-[0115]; and Figs. 3-4.

Applicants respectfully request the courtesy of a telephone call should the Examiner continue to have difficulties identifying adequate support for the claimed limitations. Applicants respectfully submit that a telephone interview may be particularly helpful in expediting prosecution of this application.

Rejections under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected under 35 USC § 103(a) as obvious over Herz et al. US Patent Publication No. 2001/0014868 (hereinafter “Herz”) in view of Dahm et al. US Patent No. 6,301,471 (hereinafter “Dahm”). Applicants note that claims 1-20 have been cancelled, rendering the Examiner’s rejections moot. Applicants also respectfully submit the following.

Applicants previously submitted remarks of October 27, 2008 remain equally applicable here and are therefore incorporated by reference herein.

Applicants respectfully submit that the art of record does not teach or suggest, either alone or in any combination, all the claimed limitations of the instant independent claims. Therefore, Applicants respectfully submit that the art of record, even considered in combination with one another, does not render the instantly claimed invention obvious under 35 U.S.C. § 103(a). Thus, Applicants respectfully submit that the instant claims are currently in condition for allowance.

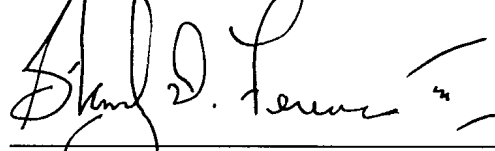
Request for Telephone Interview

If the Examiner determines that there are outstanding issues remaining in the case after taking up and considering this Amendment, Applicants respectfully request that the Examiner contact the undersigned at the telephone number listed below in order to schedule a telephone interview. Applicants respectfully submit that a telephone interview prior to the issuance of a further Office Action would help expedite the prosecution of this case.

Conclusion

In summary, it is respectfully submitted that the instant application, including claims 21-40, are presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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